

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

**REPLY COMMENTS OF SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC**

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**COMMENTS OF SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.**

INTRODUCTION

Supra Telecommunications and Information Systems, Inc. (“Supra” or “Supra Telecom”) a competitive local exchange carrier (“CLEC”) providing competitive local telecommunications services in Florida pursuant to Section 214 of the Communications Act of 1934 and state certificates of public convenience and necessity, hereby submits reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking in WC Docket No. 04-313 and CC Docket No. 01-338.

In the Commission’s NPRM issued on August 20, 2004, the Commission sought comment on how to respond to the D.C. Circuit’s *USTA II* decision in establishing sustainable new unbundling rules under sections 251(c) and 251(d)(2) of the Act. Specifically, the Commission sought comment on the changes to the Commission’s unbundling framework that are necessary, given the guidance of

the *USTA* // court. Supra presents these reply comments in response to the Commission's request.

THE FCC AND THE ILECS ONCE CONSIDERED UNE-P COMPETITION AS SUFFICIENT FOR SECTION 271 TO ALLOW THE BELL COMPANIES INTO THE LONG DISTANCE MARKET.

It is ironic that the Bell Companies claimed UNE-P was real, viable competition when they were filing their 271 applications with the FCC. Now that the Bell Companies have received their 271 approval, they are claiming that UNE-P is "completely synthetic competition"¹ that should be eliminated. UNE-P is the tool that allowed CLECs to begin to compete and build up a customer base sufficient that the FCC determined it could remove competitive safeguards and allow the BOCs into the long distance market. Now that the Bell's have won 271 approval, they want the FCC to take UNE-P away so that the CLECs are unable to effectively compete.

Perhaps one of the most incredulous mantras chanted by the BOCs in their battle to eliminate UNE-P is that UNEs and UNE-P are priced below cost. However, in a docket in Florida, BellSouth is claiming that its UNEs are priced above cost and has submitted expert testimony and evidence to support its claim. Earlier this year, Supra filed a complaint against BellSouth alleging that BellSouth was selling its Preferred Pack bundle of local calling and custom calling features for

¹ See Initial Comments of BellSouth Corporation, p. 2.

only \$26.95 which was below the cost that Supra paid for the UNEs to replicate BellSouth's Preferred Pack service offering.² BellSouth responded by stating that it was in fact selling its Preferred Pack above its direct cost despite the fact that the \$26.95 price was \$2.00 less than total price of the UNEs needed to replicate BellSouth's Preferred Pack service. In fact, BellSouth argued that the profit margin on its Preferred Pack service was large enough to payback the \$165.88 in cash bonuses and other incentives that BellSouth was offering to consumers to win them back to BellSouth.³

STATES HAVE AUTHORITY TO IMPOSE ADDITIONAL BUNDLING OBLIGATIONS.

The Bells' wish list includes a request that the Commission rule that states have no authority to impose unbundling obligations of any sort on Bell Operating Companies pursuant to section 271.⁴ However, this position is 180 degrees opposite to the position BellSouth took in 1995 when it filed comments in the FCC's first NPRM in the Local Competition Docket and declared that states are responsible to identify UNEs under section 251(c)(3).⁵ The operative phrase in

² See Petition of Supra Telecommunications and Information Systems, Inc.'s to Review and Cancel BellSouth's Promotional Offering Tariffs Offered in Conjunction With its New Flat Rate Service known as the PreferredPack Plan in Docket No. 04-0353 Before the Florida Public Service Commission, Filed April 20, 2004.

³ See BellSouth Telecommunications Inc.'s Response to Supra Telecommunications and Information Systems, Inc.'s Motion for Summary Final Order in Re: Petition of Supra Telecommunications and Information Systems, Inc.'s to Review and Cancel BellSouth's Promotional Offering Tariffs Offered in Conjunction With its New Flat Rate Service known as the PreferredPack Plan in Docket No. 04-0353 Before the Florida Public Service Commission, Filed August 16, 2004, pp. 6 – 10.

⁴ See Initial Comments of BellSouth p. 4.

⁵ See First Report and Order in Docket No. 96-325, paragraph 229. "BellSouth, in contrast, interprets section 251(c)(3) as requiring the Commission to identify network elements only when a state commission

this instant proceeding is “pursuant to 271.” While Congress identified only a limited role for states within section 271 in regards to reviewing a Bell’s request for 271 interLATA authority, Congress did not use section 271 to prohibit states from imposing their own unbundling obligations above and beyond those found in section 251 or 271 once a Bell company had been granted authority to enter the long distance market under section 271. In fact, section 251 and section 271 represent the minimum unbundling requirements that the ILECs must meet regardless of what a state commission finds. States have their own authority to pass legislation that can require the ILECs to unbundle any and all network elements for the provisioning of local telecommunications services within their respective states. For example, in the state of Florida, the main state in which Supra Telecom provides service, the Florida legislature passed chapter 364 which requires BellSouth, Verizon, Sprint, and other ILECs to unbundle their network and sell it wholesale to CLEC competitors. Nothing in Florida’s Chapter 364 unbundling law suggests that Florida’s unbundling rules can be over-ridden by federal unbundling rules.

The fact that Congress gave the FCC authority over reviewing the Bells’ 271 applications and approving their entry into the long distance market does not mean that states cannot establish their own unbundling rates, terms, and conditions. Although Congress gave the FCC authority to determine the Bells’ compliance with Section 271 for approval to enter the long distance market,

has failed to carry out its responsibilities under section 252, and the Commission assumes those responsibilities under section 252(e)(5).”.

Congress did not prohibit states from legislating their own laws requiring the Bells' to unbundle their networks and price them at TELRIC. Congress limited the FCC's role to determining the Bells' compliance with Section 271, not to overriding state law regarding the unbundling and pricing of the Bells' network. Thus, in states where the legislatures have had the foresight to pass their own laws requiring ILECs to unbundle their networks, many state commissions have the ability and the authority to ensure local competition by still requiring the Bells' to unbundle their networks regardless of whether the Bell has been granted 271 approval. State commissions are in the best position to determine the unbundling rules – the rates, terms, and conditions – that will best preserve, protect, and foster local telephone within their respective states.

The fact that a BOC has received 271 authority does not exempt the BOC from state laws requiring it to unbundle its network. While the FCC has determined that BOCs will have fewer unbundling requirements under section 271 than section 251, section 271 approval does not diminish, lessen, or change in any way, an individual state's laws requiring the BOC to unbundle its network. This includes the state equivalent of the FCC's section 251 TELRIC pricing of unbundled network elements. State commissions, operating under the appropriate state law, can, and should, continue to require the BOCs (and other ILECs) to price their unbundled network elements at TELRIC prices.

INTERMODAL COMPETITION - CMRS AND CABLE TV INTERMODAL

SWITCHING IS NOT AN ALTERNATIVE FOR CLEC SWITCHING WITHIN A MARKET.

BellSouth and the other BOCs again allege that CMRS switches and/or Cable TV switches (intermodal switching alternatives) should also be considered when analyzing self-provisioning switching or wholesale provisioning of switching in a geographic market. The FCC has already heard the Bells' arguments on this issue and soundly rejected it concluding that CMRS switches or switches used in Cable TV networks are not adequate substitutes for LEC-provided unbundled local switching be used in the analysis for either the first or second trigger.

The Commission found that CMRS providers do not provide service that is a suitable substitute for local circuit switching. As many know from their own personal experience with cellular phone service, voice clarity seldom compares to the clarity of a wireline call, calls are often dropped mid-sentence, service is simply unavailable in many areas, and surfing speeds on the internet via a cell phone are still amazingly slow. As the FCC has stated earlier,

“We also find that, despite evidence demonstrating that narrowband local services are widely available through CMRS providers, wireless is not yet a suitable substitute for local circuit switching.....the record demonstrates that wireless CMRS connections in general do not yet equal traditional landline facilities in their quality and their ability to handle data traffic.”⁶

⁶ TRO para. 445.

“...we note that CMRS does not yet equal traditional incumbent LEC services in its quality, its ability to handle data traffic, its ubiquity, and its ability to provide broadband services to the mass market...”⁷

The FCC stated that that Bell companies had not presented evidence that either CMRS or Cable TV switching provided CLECs access to the ILEC’s DS0 loops. Thus, neither CMRS nor Cable TV switching could be considered as intermodal alternatives for wholesale switching for purposes of this docket.

“We are unaware of any evidence that either technology (cable or CMRS) can be used as a means of accessing the incumbents’ wireline voice-grade local loops. Accordingly, neither technology (cable or CMRS) provides probative evidence of an entrant’s ability to access the incumbent LEC’s wireline voice-grade local loop and thereby self-deploy local circuit switches.”⁸

The FCC explicitly stated that CMRS providers were not viable intermodal switch providers when analyzing CLEC self-provisioning switching or wholesale provisioning of switching in a geographic market.

“at this time, we do not expect state commissions to consider CMRS providers in their application of the triggers.”⁹

The FCC stated that its intermodal switching analysis was based, in part, on evidence from the intermodal loop analysis.¹⁰ Regarding the intermodal loop

⁷ TRO para. 230 and footnote 1549.

⁸ See TRO para. 446.

⁹ See TRO footnote 1549.

¹⁰ See TRO footnote 1355 which reads, “We note that our analysis of intermodal switching alternatives is informed by the evidence of intermodal alternatives relating to local loops. Because commenters devoted a significant amount of discussion to cable and wireless facilities as

analysis which included analyzing the use of Cable TV networks to provide voice services, the FCC stated:

“Upon review of the extensive record on intermodal competition compiled in this proceeding, we determine that, although the existence of intermodal loops does not warrant a finding of no impairment, such competition is a factor to consider in establishing our unbundling requirements.. . Neither wireless nor cable has blossomed into a full substitute for wireline telephony.”¹¹

The FCC clearly stated that intermodal switching provided by CMRS and Cable TV networks were insufficient for them to make a finding of no impairment.

“In particular, we determine that the limited use of intermodal circuit switching alternatives (CMRS and Cable TV) for the mass market is insufficient for us to make a finding of no impairment in this market, especially since these intermodal alternatives are not generally available to new competitors.”¹²

The only type of intermodal switching capability that the Commission determined was reasonable to consider as a viable switching alternative was packet switching. The Commission stated that packet switches could be considered but only to the extent that they are used to provide local voice service to the mass market.¹³

Even if the wireless carriers could overcome their inferior service quality and extremely slow data capabilities and provide service on par with landline

substitutes for local loops, evidence of intermodal alternatives is also discussed under our analysis of local loop unbundling.”

¹¹ See TRO para. 245.

¹² See TRO para. 443.

¹³ See TRO footnote 1549.

facilities, it is highly unlikely that any of the wireless carriers would voluntarily open their networks for CLECs to use to provide competing voice and data services. The majority of national wireless carriers are wholly owned by the Bells who have tenaciously resisted opening up their wireline networks to competition and likewise have no incentive to open up their wireless networks to CLECs. It is extremely improbable that the Bells would allow CLECs to use their wireless facilities to provide competing local telephony especially since the Bells have spent the past eight years fighting the CLECs to prevent them from using their wireline networks. Of the six major national wireless providers, four are owned by the BOCs and Sprint (the largest national ILEC after the Big 4 RBOCs). BellSouth and SBC jointly own Cingular and AT&T Wireless, Verizon controls Verizon Wireless, and Sprint controls Sprint PCS. T-Mobile and Nextel are the only national wireless carriers that are not owned by an ILEC operating in the United States; but remain a potential takeover target not just for Qwest (the only BOC the does not yet own a wireless carrier), but for Verizon, SBC, BellSouth, and Sprint.

**THE OPERATIONAL AND ECONOMIC BARRIERS CAUSED BY BELL SOUTH
IMPAIR SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA
UNE-L.**

Last year, the FCC concluded that on a national level, CLECs serving the mass market were impaired without access to unbundled local switching based on

evidence regarding the operational and economic barriers caused by the cut over process. The FCC stated:

“We find on a national basis, that competing carriers are impaired without access to unbundled local circuit switching for mass market customers. This finding is based on evidence in our record regarding the economic and operational barriers caused by the cut over process. These barriers include the associated non-recurring costs, the potential for disruption of service to the customer, and our conclusion, as demonstrated by our record, that incumbent LECs appear unable to handle the necessary volume of migrations to support competitive switching in the absence of unbundled switching. These hot cut barriers not only make it uneconomic for competitive LECs to self-deploy switches specifically to serve the mass market, but also hinder competitive carriers’ ability to serve mass market customers using switches self-deployed to serve enterprise customers.”¹⁴

Unfortunately, little has changed in the year since the FCC reviewed the operational and economic barriers to entry. The overwhelming majority of BOCs, including BellSouth, still price hot cut nonrecurring charges at multiples of six times or more above actual cost which makes conversion to UNE-L uneconomic for CLECs to the extent where the FCC concluded that CLECs were impaired nationally without access to unbundled local switching for mass market customers. BellSouth was charging \$59.31 per hot cut when the FCC last found that the Bells nonrecurring charges for hot cuts were an economic barriers to entry. BellSouth is still charging \$59.31 and maintaining its enormous barrier to entry. As the FCC noted last year in its Triennial Review Order, high nonrecurring charges for hot cuts caused CLEC entry to be uneconomic. The FCC also noted that customer churn exacerbates the problem of uneconomic

¹⁴ See TRO para. 459.

entry due to high non-recurring per-line charges for connecting a carrier's own switch to an unbundled loop.¹⁵ The FCC found that as a result of these barriers, there has only been minimal deployment of CLEC-owned switches to serve mass market customers. The FCC found that the characteristics of the mass market raise significant barriers to CLECs self-provisioning switching to serve mass market customers and required state commissions to develop and implement a batch cut process to overcome those barriers.

Hot cuts continue to be one of the largest operational and economic barrier to CLEC entry in the mass market especially in the conversion of UNE-P to UNE-L customers. As discussed above, the ILEC's inability to perform hot cuts in a timely manner without undue service disruption to the customer was the key reason the FCC found previously that CLECs serving the mass market are impaired without access to unbundled local switching.¹⁶ The FCC's finding was based on evidence regarding the economic and operational barriers caused by the cut over (i.e., hot cut) process.¹⁷ The FCC stated,

“...we conclude that the operational and economical barriers arising from the to cut process create an insurmountable disadvantage to carriers seeking to serve the mass market, demonstrating that competitive carriers are impaired without local circuit switching as a UNE.”¹⁸

¹⁵ See TRO footnote 1405

¹⁶ See TRO para. 419, 422.

¹⁷ See TRO para. 459.

¹⁸ See TRO para. 475.

Since the FCC's most recent investigation last year, Supra has attempted to convert several thousand customers from UNE-P to UNE-L but discontinued doing more conversions due to the overwhelming costs, service disruptions, and other difficulties Supra and its customers experienced with BellSouth's hot cut process. BellSouth's performance in executing hot cuts in Florida has not improved since the FCC's previous investigation and still remains an economic and operational barrier to Supra successfully serving its customers with its own switches. For these reasons, the FCC should find that CLECs, at least in the BellSouth region in Florida, are still impaired without access to unbundled local switching for mass market customers.

BELLSOUTH'S POOR PERFORMANCE IN EXECUTING HOT CUTS AND BATCH HOT CUTS IS IMPAIRING SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA UNE-L.

BellSouth alleges that it has demonstrated that it offers a proven, seamless and high quality hot cut process;¹⁹ however, this has not been Supra's experience with BellSouth's hot cut process. BellSouth has not demonstrated a proven, seamless or high quality hot cut process. During the month of November 2003 when Supra Telecom converted over 2,400 customers from UNE-P to UNE-L, those customers experienced No Dial Tone ("NDT") on the date of conversion between 4-5% of the time and could not receive calls for a period of four (4)

¹⁹ See Initial Comments of BellSouth; Exhibit 2, Affidavit of Kenneth L. Ainsworth, Keith Milner, and Alphonso J. Varner on Behalf of BellSouth Telecommunications Inc., ("BellSouth"), p. 3.

hours or more 47% of the time. This trend has continued into December 2003

and this evidence does not reflect a seamless or high quality process.

Additionally, the BellSouth processes in place to rectify NDT and incoming calls problems do not lend themselves to timely resolution of these troubles. For example, a customer experiencing NDT upon cutover can typically expect a twenty-four hour window for repair. These service disruptions have influenced the customer's perception of Supra Telecom's ability to provide quality service and resulted in migrations away from Supra Telecom to other carriers. Issues with number portability can and do result in a customer's inability to receive incoming calls for unacceptable periods of time, up to five days. Additionally, the incoming calls issue becomes more problematic when a telephone number has been "ported in error" due to a missed appointment or cancellation. BellSouth's current process requires Supra Telecom to submit a supplement (SUP) to the LSR and fax Form RF-3654 (*CLEC Port in Error Referral For Local Carrier Service Center*). Further, SUP LSR must be sent to BellSouth® LCSC and revised FOC received by CLEC prior to CLEC sending a Modify Subscription Version (SV) to NPAC. Meanwhile, no incoming calls can terminate to the customer's telephone number. Overall, when there is a problem, the current processes do not provide for timely restoration of service.

BellSouth's "Batch Hot Cut Process" is in fact mis-labeled. It is a batch pre-ordering/pre-qualification process that is not efficient in the least. In fact, it adds up to 14 days to the process, leads to numerous conversion rejects or increased conversion costs and culminates in the submission of a tab delimited text file. The Batch Request is initially submitted to BellSouth as an Excel spreadsheet. BellSouth responds to Supra via the Excel spreadsheet. When Supra is ready to issue the Batch Request, Supra must reformat the request into a tab delimited text file to upload into the Local Exchange Network System (LENS), in lieu of the spreadsheet. This demonstrates that BellSouth does NOT have a proven, seamless, and much less any system that could be characterized as high quality.

BellSouth imposes limits on the number of conversions Supra is allowed per day and per central office. Despite BellSouth's claims that they can perform high volumes of conversions with a high degree of accuracy, BellSouth limits Supra's conversions to 150 per central office, per day. This may be considered high volume in central offices with a few hundred existing UNE-P customers, but in some COs with 26,000 UNE-P customers, it comprises 174 working days or approximately eight (8) months to complete the conversion.

BellSouth's Batch Hot Cut or Bulk Migration process is only a batch pre-qualification process for the conversion of numbers of UNE-P customers in a central office. The only identifiable ordering efficiencies gained, from the present BellSouth process, are that any orders BellSouth deems ineligible for conversion

as SL-1 are identified and either removed from the conversion process or upgraded at BellSouth's insistence to more costly SL-2 coordinated conversions. Each line is identified and related to the batch with a project number. This process adds 14 or more days to the process (see Exhibit A). Of the four (4) 99-line batches submitted by Supra Telecom in November of 2003, 30-40 lines in each were returned as SL-2 conversions required and 1-5 were classified as non-convertible in any way.

BellSouth describes the three levels offered by BellSouth for coordinating the hot cut process. Supra has not used the level entitled "Coordinated/Time Specific" option as yet, though Supra contemplates doing so for its small business customers in the future. The level entitled "Coordinated" conversion normally means that all parties involved from both sides of the conversion are in direct communication as the conversion takes place. In this case, BellSouth indicates that they will communicate internally during the conversion, and then attempt to contact the CLEC to notify them of the conversions completion. This is not what the industry considers "coordinated" nor is it time specific unless both carriers are communicating during the conversion.

BellSouth's coordinated process does not allow for parties to communicate during the conversion process. As noted above, "coordinated" should imply that all parties are communicating during the cut-over process. If BellSouth were to implement a true coordinated conversion, then the assumption of satisfactory

completion would be unnecessary and any potential for an out of service (OOS) condition would be eliminated. As it is described herein, the delays input by this process could cause up to 12 hours of an out-of-service condition while awaiting a response from the CLEC. Furthermore, there is an assumption of successful completion; what is the process if it was not successful? This is a process not described in any of the cutover processes described by BellSouth. Nor have they described the rollback process if there is a problem on either side.

Supra's experience with BellSouth's hot cut process in November and December of 2003 with over 3,500 conversions including individual orders and the batch process, has clearly illustrated that the order completion step is the greater of two major out-of-service conditions encountered in the conversion process.

BellSouth has no metric nor have they offered one similar to Verizon's to assure that the central office frame technician will enter completions into their systems in a timely manner. The extent of their commitment is that they will only commit to make a best effort to enter the completions in less than four (4) hours. This commitment is entirely dependant upon the mood, attitude or workload of a technician that sees the CLEC as the enemy. This lack of a metric or codified process has led to completion notices being received by Supra Telecom as late as midnight of the conversion due date. In contrast, Verizon requires that its technicians enter the completions every 20 orders or using their time studies, every 74 minutes. The technicians are measured and graded based on this requirement.

BellSouth alleges that its coordinated conversions assure the highest level of coordination and communication during the provisioning process. What is ignored, however, is that during the most critical point in the process, the actual conversion, this coordination and communication is nonexistent. The process does not assure direct notification at the conclusion of the conversion. It only assures that an attempt will be made to notify the CLEC. This is similar to the purported best effort to enter completions into the service order system in a timely manner during un-coordinated conversions. Neither function is measured, scored or reported.

BellSouth alleges that its uncoordinated conversion is low cost; however, BellSouth charges Supra \$59.31, for an un-coordinated conversion. This is far from low cost. Close examination of the cost factors used to substantiate the rate used for UNE-P to UNE-L conversion NRCs, have revealed numerous Outside Plant, administrative and engineering costs loaded into the charge. These costs do not apply in the majority of the simple conversions of a customer's copper loop from BellSouth to the CLEC switch port.

**BELLSOUTH'S HIGH NON-RECURRING CHARGE FOR HOT CUTS IS
IMPAIRING SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA
UNE-L.**

BellSouth charges an exorbitant nonrecurring charge to Supra Telecom for converting UNE-P to UNE-L or migrating a Supra customer loop from BellSouth's switch to Supra's switch. The charge is approximately 6 times the actual cost to BellSouth. It is not surprising that BellSouth would try to enforce an outrageous rate. BellSouth proposed a rate of \$178 for resale to UNE-P conversions, but the FPSC later determined that the cost-based rate was only \$1.47²⁰, less than 1% of the rate that BellSouth proposed. Subsequent FPSC TELRIC proceedings reduced that rate to \$0.102 (10.2 cents)²¹

Supra's current interconnection agreement with BellSouth does not specifically address the NRC for UNE-P to UNE-L conversions. Bellsouth in sworn testimony in Federal court has stated that they have never produced a cost study for this and the FPSC has never heard testimony regarding this cost. Supra met with BellSouth on March 5, 2003 to discuss the conversion of Supra customers from UNE-P to UNE-L and to discuss the appropriate rate. In that meeting, BellSouth said the rate was \$49.57 for the first line on an order, and \$22.83 for additional lines on the order. In a letter from BellSouth dated May 21, 2003, BellSouth raised the rate further to \$51.09. Subsequently they began billing Supra \$59.31 to disconnect local switching by cross-connecting the loop to Supra's switch. However, as stated above, there is no rate for this in the current Supra/BellSouth interconnection agreement. The rate that BellSouth quoted to

²⁰ FPSC order PSC-98-0810-FOF-TP, June 12, 1998.

²¹ FPSC Order PSC-01-2051-FOF-TP, October 2001.

Supra was the NRC rate for new construction of a 2-wire analog voice grade loop.

A hot cut, or UNE-P to UNE-L conversion, is a simple cross-connect as has been shown by several parties at the Commissions Oct. 28, 2003 meeting on hot cuts.

All that a BellSouth central office technician has to do to transfer a customer's loop from BellSouth's switch to Supra's switch is (1) run a jumper cable from the Main Distribution Frame (MDF) to which the customer's UNE loop is attached to Supra's collocated equipment, and (2) notify the relevant Number Portability Administration Center (NPAC) that calls to those customers' numbers should be routed to Supra's network. Supra estimates that the entire process should take about 3 minutes per loop and that the cost should be less than \$6.00. Hence, Supra recommends that the FCC find that CLECs are impaired without access to unbundled local switching for mass market customers if the ILEC charges more than \$6.00 for a hot cut non-recurring charge.

BELLSOUTH'S INABILITY TO DELIVERY TIMELY NOTIFICATION OF HOT CUT COMPLETIONS IS IMPAIRING SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA UNE-L.

Again, completion notification is the most troublesome function in the process. The notifications are in the form of "Go-Ahead Notices" sent to the CLEC on an individual telephone number (TN) basis. Supra Telecom's experience with Go-Ahead Notices is that they are received up till 9:00 PM on the due date during a

normal workload day and sometimes after midnight on busy days or during periods of BellSouth system congestion. If one assumes that BellSouth technicians end their work day on or before 5:00 PM, this causes an unacceptable delay of at least four hours during which the customer cannot receive calls.

The fact that BellSouth has received 271 approval does not mean BellSouth has met the higher performance standard required by the FCC to find that CLECs are unimpaired without access to unbundled local switching. Similarly, merely because BellSouth may have been able to perform adequate hot cuts on a few test accounts when state commissions or the FCC were watching does not mean that BellSouth is able to do mass quantities of hot cuts at high standards. The FCC indicated that neither the State's nor FCC's 271 approval is applicable to a situation in which CLECs will not have unbundled circuit switching or UNE-P. BellSouth's characterization that the 271 process has already concluded that BellSouth's hot cut process is adequate to eliminate UNE-P is unfounded. Supra does not have non-discriminatory access to BellSouth's UNE-L loops to serve the mass market. Every BellSouth process that Supra has seen is geared for the business CLECs with lower volumes of orders consisting of high capacity lines requiring coordinated conversions. The volumes required by a residential CLEC cannot be met reliably with the highly manual BellSouth processes. If BellSouth truly provided non-discriminatory access to its UNE-L loops, Supra would not

have received notice from BellSouth that 4 out of every 99 line on each of its batch hot cut orders were non-convertible in the Pembroke Pines central office.

BellSouth's hot cut process does not provide for local loop verification when, due to the process chosen by BellSouth, the loop must be replaced by copper or UDLC in lieu of existing UDLC or IDLC served loops. Supra suspects that this loop replacement process is causing a 4-5% rate of no dial tone occurrences during hot cut conversions. Supra cannot provide actual data because BST declines to identify these customers prior to the conversion. The notification of conversion completion must be accelerated, automated, measured, and scored in order to reduce service outages in the high volumes required by CLECs serving the mass market.

BellSouth's current hot cut process does not provide for timely restoration of a customer's telephone service when a telephone number has been "ported in error" due to a missed appointment or cancellation. BellSouth's current process requires Supra Telecom to submit a supplement (SUP) to the BellSouth local service request ("LSR") and fax Form RF-3654 (*CLEC Port in Error Referral For Local Carrier Service Center*). Further, SUP LSRs must be sent to BellSouth LCSC and a revised Firm Order Confirmation ("FOC") received by Supra prior to Supra sending a Modify SV to NPAC notice. Meanwhile, no incoming calls can terminate to the customer's telephone number. Thus, the current processes do not provide for timely restoration of service.

Supra cannot realistically begin its part of the LNP porting process until it receives notification from BellSouth that BellSouth has completed the hot cut. Unfortunately, BellSouth waits several hours before it notifies Supra that the conversion has been completed. Theoretically, Supra could port the customer's phone number prior to receiving notice from BellSouth that the conversion has been completed. However, due to the possibility that BellSouth did not do the conversion (perhaps due to a missed appointment) Supra takes the safe route and waits for completion notification rather than go through the difficult process of porting a number back to BellSouth for lines that were not converted.

The economic cost of conversions is very important to CLECs with large residential customer bases that produce lower revenue per line than business accounts. Unfortunately, BellSouth has taken the course of meeting the minimum requirements for non-discrimination at the highest cost to them and the CLEC. They are utilizing a very manual process with the built-in costs of an over abundance of labor instead of developing simple automated processes and cleaning up their databases to reduce the cost while improving the process. This stands in stark contrast to Verizon's process. Verizon has taken advantage of existing automated processes and the Internet to improve the conversion process from beginning to end, reduce out of service time, add enhancements and reduce the overall cost to the CLEC.

Supra's experience with IDLC is that a large number of customers experience NDT conditions on or before the conversion due date. This indicates that many of these loops are converted to straight copper or UDLC prior to the due date and few if any are tested from customer NID to the CO prior to the jumper move on the MDF. Unfortunately, Supra can only assume the above because BellSouth does not identify these customers to Supra in advance and Supra cannot envision how a customer conversion consisting of a "jumper ONLY move" would cause a no dial tone condition. This is especially true considering that Supra Telecom tests for dial tone prior to the due date and BellSouth tests again on the due date and is quick to point out the accuracy of the jumper conversion.

The bulk process should allow for pre-qualification of lines to be converted helping to avoid missed appointments, plant facilities issues or out-of-service issues. But, if efficiency is measured as time and resources expended in a process, Supra does not agree that BellSouth's Batch Cut Process is more efficient. BellSouth's Batch Cut process adds a minimum of 17 business days to the conversion interval. (See Exhibit A) This delay causes Supra to have to re-qualify every line before submitting its LSRs to assure that nothing has changed on that line in the 14 business day interval. This is very difficult to do in the very short three day interval allowed to submit the final LSRs.

**CRITERIA FOR FINDING NON-IMPAIRMENT FOR UNBUNDLED LOCL
SWITCHING IN THE MASS MARKET.**

As Supra discussed in its initial comments, the FCC should find that CLECs are impaired without access to unbundled local switching for mass market customers if any of these four conditions exist:

- 1) The hot cut non-recurring charge is greater than \$6.00 per hot cut which constitutes an economic barrier to entry for the CLEC.
- 2) Where the ILEC has not proven the ability to cut over 1,000 loops per day per CO with 95% completed correctly without error or the same percentage of correct completions that the ILEC provides to its own customers. (operational barrier).
- 3) In any local exchange wire center where 10% or more of the residential customer base cannot be served with UNE-L.
- 4) All wire centers where a CLEC has less than 3,000 customers unless there are two other competitive (non-ILEC) providers of mass market switching serving that wire center (economic barrier); meaning there should be two wholesale competitive providers of mass market switching offering wholesale unbundled local switching to other CLECs that have not yet installed their own switches.

A LEC must present evidence that it has cleared each of these thresholds before it will be found that CLECs are not impaired in that market, thus relieving the LEC of pricing UNE switching at TELRIC.

Regarding condition number four, Supra is intimately familiar with the local exchanges markets in BellSouth's service area in the state of Florida and has searched diligently for a wholesale provider of unbundled local switching other

than BellSouth, including intermodal providers of service comparable in quality to that of BellSouth, serving mass market customers with their own switches.

Supra has reviewed these markets and not found any wholesale providers of unbundled local switching. There are no areas in BellSouth's territory where there are two or more CLECs not affiliated with each other or BellSouth that are offering wholesale unbundled local switching to other CLECs to serve mass market customers.²² In fact, there is not even one identifiable wholesale provider of unbundled local switching for serving mass market customers in the state of Florida, regardless of area, much less two or more.

In its previous order, the FCC has said that switches serving the enterprise (DS1) market cannot be counted toward meeting the threshold for the mass market triggers.²³ Even though there is a possibility that switches being used to serve the enterprise market could be deployed to serve the mass market after the state commission implements a batch cut process, the state commission should not currently consider them for purposes of meeting the triggers. After the state commission implemented a batch cut process that was proven to work, the state commission could investigate those switches to see if they met all of the

²² Additionally, it should also be noted that there are not three CLECs in any BellSouth local exchange that are actively serving mass market customers. This analysis is based on the criteria set forth by the FCC that each of the three CLECs must be actively providing voice services to mass market customers in that market and the CLEC must also be operationally and economically able and willing to provide service to all customers in that market. Additionally, there must not be any extenuating circumstances that create a significant barrier to entry such that even CLECs that self-provision their own switching would not be able to enter the market to serve mass market customers. Further, the FCC has found that CMRS switching and Cable TV switching is not a viable substitute for the availability of ILEC-provided unbundled local switching.

²³ See TRO para. 580.

necessary criteria.

SUPRA'S OWN FACILITY DEPLOYMENT IN BELL SOUTH'S TERRITORY

Supra Telecom self-provisions switching in the following wire centers within the BellSouth territory: North Dade Golden Glades (NDADFLGG), and a remote off of that switch located in Miami Red Road (MIAMFLRR). Supra currently has 16 other collocation sites serving DLC service which is routed back to its switch. 10 of those DLCs serve customers in 8 different rate centers in LATA 460, the remaining 6 each serve approx 512 per office lines throughout the state from Orlando to Pensacola in 6 different rate centers. All told Supra has the capacity to deploy 28,000 lines of DS0 service. This represents 0.4% of BellSouth's approximately 6.3 million lines in Florida. Due to various issues between the BellSouth and Supra ranging from collocation, interconnection, billing and hot cuts prices and performance, Supra is only currently serving about 16,000 customers (0.25% of BellSouth's base). These small percentages would not support an assertion by BellSouth or anyone else that Supra represents a trigger, or that Supra can serve all of its current UNE-P customers off of the existing switch. Supra is firmly committed to converting to a UNE-L platform and expanding its network. However, it has taken nearly five years of litigation (from application to space turn over to acquiring collocation spaces first applied for in 1998, and many other issues) to acquire 270,000 UNE-P customers, yet convert only 16,000 of them to UNE-L.

Supra has collocated its own switch (and an associated remote) in two BellSouth central offices throughout Florida and is supporting 16 DLC sites off that switch.

Supra is committed to the process of converting its 270,000 plus UNE-P customers to UNE-L, and will grow its network deployment beyond the 28,000 line current capacity if given the chance to do so. However, based on the problems Supra has experienced with collocation, UNE-P, billing and hot cuts there are operational and economic barriers in every market in BellSouth's territory.

Even when provided with identical orders, BellSouth cannot readily provision UNE cross-connects for network interconnection and trunking. Cross-connects are commonly provisioned from the Special access tariff at a higher rate than the interconnection agreement. Bellsouth provisions virtually all DS1 and higher cross-connects randomly from office to office requiring large amounts of time and effort to resolve. This problem exists both on the line (customer) side and the network interconnection side.

As discussed earlier in these comments, Supra is experiencing large amounts of order failures with POTS loops served via UDLC, IDLC or IFITL because the facilities necessary to convert the volume of loops Supra needs to convert just are not available.

Even for bare copper loops, Supra is experiencing an unacceptable situation due to Bellsouth's poor quality line records. Initially as the conversion process started, which should just require moving a cross-connect inside the central office, Supra was being presented with a significant number of missed appointments.²⁴ However BellSouth was dispatching technicians to the customer premises without ever notifying Supra of the need for an appointment. The only rational explanation for this behavior is that BellSouth was performing a rearrangement of the wiring, for whatever reason, and couldn't find the appropriate pair due to faulty cable records. In this case, the only way to resolve this situation was to put a tone at the customer premises and find the wire at the cross-box, etc. If a technician could not get access (it had never requested), the conversion to UNE-L stopped and Supra was billed \$90!

When Supra objected to this behavior and insisted they stop this practice, they did, and the number of lines which reported no dial tone ("NDT") after conversion quickly rose. In many cases it has taken multiple repair calls and customers have been without service for periods of five to six days with such regularity, Supra had to implement a program of loaning cellular phones to customers affected by loss of dial tone during a conversion from UNE-P to UNE-L until BellSouth could finally make the loop functional once again.

TRANSITIONAL USE OF UNBUNDLED LOCAL SWITCHING

²⁴ A missed appointment occurs when a technician, in the field, cannot get access to the customers Network Interface Device ("NID").

In the NPRM released in August, the FCC proposed a six month transitional period for transitioning to market rates for UNE-P and ultimately eliminating UNE-P. However, the CLECs' impairment would not be cured if unbundled local switching were only made available for a transitional six-month period. The economic and operational problems that have been described above will not be cured by a six-month transitional period or "rolling access" to the ILEC's unbundled local switching. Given BellSouth's inability to perform hot cuts in commercial volumes, Bellsouth would need at least 2 ½ years just to convert Supra's existing customer base from UNE-P to UNE-L provided that BellSouth could execute the hot cuts without any of their other typical problems.

BELLSOUTH HAS DIFFICULTY PROVISIONING UNE-L IN AREAS HEAVILY SERVED BY IDLC.

BellSouth implicitly recognizes the difficulties in converting UNE-P to UNE-L when the services are running over IDLC facilities. In an affidavit filed by Mr. Milner, BellSouth sets forth a list of eight solutions to the IDLC problem.²⁵ However, BellSouth's proposed solutions do not provide for local loop verification when, due to the process chosen by BellSouth, the loop must be replaced by copper or UDLC in lieu of existing UDLC or IDLC served loops. Supra suspects that this loop replacement process is causing a 4-5% rate of NDT occurrences during conversions. Supra Telecom cannot provide actual data because BST declines to identify these customers prior to the conversion.

²⁵ See Initial Comments of BellSouth, Attachment 3, Affidavit of W. Keith Milner, pp. 3-5.

Even if a CLEC has collocated a switch in the ILEC's central office, the CLEC still may be unable to serve all of the customers in that central office without access to unbundled local switching. This is because POTS service is no longer exclusively provisioned via long 2-wire copper loops stretching from the switch to the customer premises. Although new technologies such as Integrated Digital Loop Carrier ("IDLC") (a.k.a loop Concentration) and fiber to the home ("FTTH") have brought about economies of scale to the ILEC, they also require that such facilities be modified in order to convert CLEC customers from UNE-P to UNE-L. In some BellSouth wire centers, more than 70% of the customers are served by IDLC - high capacity transport circuits that run from the switch to Digital Loop Carrier ("DLC") equipment in remote terminals ("RTs"). Although this may provide the ILEC with some operational efficiencies, only one switch can connect to this transport circuit which prevents a CLEC from serving those customers via UNE-L because an individual unit of IDLC equipment cannot talk to more than one switch. In order for a CLEC to serve customers from the remote terminals, a CLEC must either 1) be given full control of an entire IDLC box²⁶; 2) have the loop transferred to an older Universal DLC ("UDLC") technology if it exists and has capacity in the RT; or 3) use one of a limited number of remaining copper loops in the RT. All of these approaches are problematic. First, BellSouth lacks a workable business process to do the conversions; second, facilities do not exist

²⁶ While the FPSC has established rates for this, BellSouth steadfastly refuses to allow Supra to purchase loop concentration facilities to Supra's switch, and denies having OSS and billing support to provide such service.

in any large number and those facilities that do exist are often already partially or fully used by BellSouth itself; and third, there is severe service quality degradation as a result of switching to UDLC. The use of multiple UDLC boxes can also have a detrimental effect on high speed modem used by a customer for dial-up internet service. Multiple UDLC boxes causes a customer who enjoyed 56 kbps modem speeds as a Bellsouth customer to suffer 14.4 kbps or slower service as a CLEC customer due to the multiple A/D and D/A conversions negatively affecting the modems ability to compress data at the 56 kbps rate. Service provided to customers formerly served by IDLC technology cannot be provided in the same quality, time, or manner as it is to a BellSouth Retail, Resale, or UNE-P customer.

Supra asks the Commission to consider the ILECs' use of pair-gain technologies, including Digital Loop Carrier ("DLC") in its analysis of the loop UNE. BellSouth uses DLC to concentrate additional loops onto existing feeder circuits in areas where they have "run out" of loops. Over time, this has become the predominant method of outside plant build-outs since 1995. DLC (and other) digital loop technology synthesize the normal operation of a loop by digitizing each telephone call and passing the digitized information over a single circuit consisting of DLC, fiber backhaul (i.e. F2 transport), and the F1 subloop. The digitized signals are extracted by corresponding central office based electronics and placed on separate two wire copper circuits and fed to the Class 5 switch.

Ever since modem speeds increased above 28.8 BPS, it has become essential that the loop serving a customer have, at most, a single analog to digital conversion. The compression

algorithms inherent in 56K modems will tolerate no more, and indeed require non-standard implementations of the GR-303 to achieve full rated speed. GR-303 is the standard communication protocol between Digital Loop Carrier (DLC) equipment and the Class 5 switch that serves it. With a standard GR-303 interface a 56K modem can easily be limited to 28.8K or less. With DAML added in such a loop communications can fall as low as 4.8K.

Given the ubiquitous presence of the Internet, digital modem, DSL and future Advanced Services depend upon the loop characteristics, and particularly equal access to control loop quality characteristics. While BellSouth has the unbridled ability to "tune" a loop to satisfy a given customer's complaint, BellSouth currently only "guarantees" its loops to be capable of 9600 baud operation!²⁷ Clearly BellSouth has a substantial advantage over Supra in this situation, and the opportunity for anti-competitive "win-back" of a customer whose line speed dramatically drops at conversion to Supra is all too difficult to ignore.

Typically, when a BellSouth customer switches over to Supra, either at conversion or some time shortly thereafter, and with no prior warning to Supra, the customer's line is converted to DAML (or run through multiple DLC systems). Immediately, the customer begins complaining about the drop in modem speed. BellSouth refuses to acknowledge this problem yet it is clearly a violation of the Telecommunications Act²⁸ and all FCC

²⁷ Supra's current Interconnection agreement has extended that figure, but only to 14.4 Kbps!

²⁸ Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(3).

orders requiring parity²⁹, including orders that have been sustained by the Supreme Court³⁰. The Commission needs to set new and higher standards for the digital transmission capabilities of the loop that only ILECs are currently capable of fully enjoying.

SUMMARY

Supra asks that the Commission find that CLECs serving the mass market are impaired without access to unbundled local switching. As described above and in initial comments, Supra has proposed reasonable conditions for the ILEC to meet that will ensure that CLECs are able to continue serving customers in the mass market before the ILEC is relieved of its obligation to provide unbundled local switching at TELRIC rates. Specifically, the FCC should find that CLECs are impaired without access to unbundled local switching for mass market customers if any of these four conditions exist:

- 1) The hot cut non-recurring charge is greater than \$6.00 per hot cut which constitutes an economic barrier to entry for the CLEC.
- 2) Where the ILEC has not proven the ability to cut over 1,000 loops per day per CO with 95% completed correctly without error or the same percentage of correct completions that the ILEC provides to its own customers. (operational barrier).

²⁹ 47 C.F.R. § 51.315(b).

³⁰ *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and pg. 393-395

- 3) In any local exchange wire center where 10% or more of the residential customer base cannot be served with UNE-L.
- 4) All wire centers where a CLEC has less than 3,000 customers unless there are two other competitive (non-ILEC) providers of mass market switching serving that wire center (economic barrier); meaning there should be two wholesale competitive providers of mass market switching offering wholesale unbundled local switching to other CLECs that have not yet installed their own switches.

A LEC must present evidence that it has cleared each of these thresholds before it will be found that CLECs are not impaired in that market, thus relieving the LEC of pricing UNE switching at TELRIC.

Supra also asks that the Commission reiterate its requirement that the BOCs are required to provide unbundled network elements to CLECs and to combine those elements as required. For each network element, Supra requests that the Commission specifically identify the specific rule that requires each network element to be unbundled and combined with other network elements and the specific rule that governs the pricing of that network element. Supra does not believe that USTA II, in and of itself, changed the BOCs obligation to continue to provide unbundled network elements under section 271 as described by the Commission in its order. Supra also believe that USTA II did not change the pricing rules the Commission established in its Order. However, the LECs' interpret the unbundling and combining requirements as well as pricing

requirements under USTA II differently than what Supra believes was originally envisioned by the FCC in its order despite the fact that the DC Court upheld the Commission's ruling on that issue. It is for this reason that Supra requests that the Commission undertake the laborious but necessary task of clarifying its rules for unbundling, combining, and pricing network elements and specifically discuss the application of its rules to each of the individual unbundled network elements in order to remove any confusion that may exist between ILECs and CLECs.

Respectfully submitted,

Brian Chaiken

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Exhibit 1

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Exhibit 1: BellSouth Batch Hot Cut Timeline Dated March 5, 2003

ID	Task Name	Duration	Start	Finish	Jun 1, '03							Ju
					S	M	T	W	T	F	S	
1	New Schedule (as of 3/30/03)	24 days	Mon 6/2/03	Thu 7/3/03								
2	Project Manager receives TN Spreadsheet	0 days	Mon 6/2/03	Mon 6/2/03								
3	Verify accuracy and pass on to SPOC	0 days	Mon 6/2/03	Mon 6/2/03								
4	SPOC provides DD with earliest being 24 days from PM receipt of TN SS	7 days	Mon 6/2/03	Tue 6/10/03								
5	CLEC updates BULK LSR with DDs and submits electronically to BellSouth (LCSC)	3 days	Wed 6/11/03	Fri 6/13/03								
6	Earliest DD	14 days	Mon 6/16/03	Thu 7/3/03								
7												
8	Old Schedule at time of conference (3/5/03) Revised 3/30/03	21 days	Mon 6/2/03	Mon 6/30/03								
9	Project Manager receives TN Spreadsheet	0 days	Mon 6/2/03	Mon 6/2/03								
10	Verify accuracy and pass on to SPOC	0 days	Mon 6/2/03	Mon 6/2/03								
11	SPOC provides DD with earliest being 21 days from PM receipt of TN SS	7 days	Mon 6/2/03	Tue 6/10/03								
12	Earliest DD	14 days	Wed 6/11/03	Mon 6/30/03								